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Testimony of Gregory Bialecki  
Secretary of Housing and Economic Development To The Joint Committee on  
Economic Development and Emerging Technologies  
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Chairwoman Candaras, Chairman Wagner, and members of the committee:

Thank you for the opportunity to appear before you today. As you know, the provisions regarding non-competes in House 4082 mirror those in Governor Patrick's Act to Promote Growth and Opportunity. We are grateful for and encouraged by the progress of House 4082, as well as the support we have been receiving from the many individuals whose careers and lives have been adversely affected by overly burdensome non-compete agreements.

Massachusetts must do everything it can to retain talented entrepreneurs, support individual career growth, and encourage innovative new businesses that are the engines of economic growth and job creation. Excessive use of non-compete agreements impede these goals.

You have heard members of our venture capital and technology sectors testify about the detrimental effect non-competes have on entrepreneurship and business growth in their industries.

You have heard Professor Matthew Marx testify that he advises promising and entrepreneurial-minded MIT graduates to strongly consider the potential impact of non-competes when evaluating job offers.

You have heard from lawyers who regularly counsel early-stage investors and entrepreneur clients to favor job opportunities in jurisdictions or at companies that do not use non-compete agreements for the same reasons.

Though the venture capital community and tech entrepreneurs have been among the most vocal proponents of Governor Patrick's proposal, this is an issue which affects Massachusetts residents' ability to earn a living across a variety of sectors. Hard-working individuals outside of the technology sector – car salespeople, pet groomers, hair stylists, medical translators, and even teenage camp counselors – have been denied jobs or locked out of the workforce entirely because of unduly restrictive non-competes. In some of these cases, it is unlikely that a court would even enforce these restrictions. Yet, the mere threat of enforcement can be enough to deter individuals from making well-advised job changes, and deters prospective employers from considering even the best-qualified candidates to avoid the cost of a lawsuit. It is enough to keep unemployed individuals idling on the sidelines of our economy, often for a year or more, sometimes collecting unemployment benefits, eagerly waiting for restrictive periods to expire so they can get back to work. You will hear from more of these individuals today.

You have also heard testimony from business groups who would prefer to keep the current legal structure regarding non-competes intact, who fear that changes to the enforceability of non-competes would jeopardize their protection of trade secrets and confidential information. House 4082 seeks to strike a balance among these competing interests while maximizing the opportunity for economic growth and employment.

House 4082 enhances trade secret protection by adopting a version of the Uniform Trade Secrets Act (UTSA), modernizing and augmenting our existing trade secret law framework. Employers have the right to protect trade secrets and confidential information, and employees have the right to choose where they work without the fear of lawsuits. Today, in Massachusetts, that is not the case. Many employers regularly require non-competes as a condition of employment, even if restrictions are not necessary to protect legitimate company interests.

I must emphasize that House 4082 leaves intact other existing contractual protections, including non-disclosure agreements, non-solicitation agreements, and anti-raid agreements, all of which enable businesses to protect legitimate company interests. Businesses will also continue to have intellectual property protections under state and federal copyright, trademark and patent laws. These valuable and robust tools are narrowly tailored to protect the same business interests as non-competes without the collateral damage that non-competes often inflict on individuals and our economy.

As a forward-looking state, it is fair to ask, if non-competes were not recognized by our existing legal structure, whether we would seriously entertain a proposal to begin allowing such restrictions today. If the answer is no, we must ask ourselves why we should continue to embrace restrictions that are inconsistent with our current values regarding individual mobility and the needs of a prosperous twenty-first century economy.

The world is moving toward more fluid labor markets, and we must embrace that to remain competitive. According to a U.S. Department of Labor study, the average American now has 11.3 jobs between the ages of 18 and 46. A recent study cited by Forbes found that 91% of Millennials expect to remain in a job for less than three years. Allowing talent to flow freely, especially in a state that does such an excellent job educating this talent, is something we should encourage in our efforts to retain it.

Opponents to reform often note that most states, with California as a prominent exception, enforce non-competes in certain circumstances. Less often acknowledged, but important to understanding where Massachusetts stands in the national landscape, is that there is a wide spectrum of enforceability of non-competes amongst the states. A study out of UCLA's Anderson School of Management ranked Massachusetts among a dozen of states in which non-competes are most rigorously enforced. In fact, only three states—Tennessee, Florida and Missouri—were ranked as more aggressive than Massachusetts in this respect. You may have seen the article in the [New York Times](#) last month, focused almost exclusively on Massachusetts, detailing instances where overreaching non-competes have crept into professions affecting event planners, chefs, yoga instructors, and others, even restricting entry-level staff and interns.

We also cannot ignore the fiscal costs of non-competes to the Commonwealth, in the form of benefits and resources to individuals shut out of the workforce, as well as foregone tax revenue that would otherwise be generated during restricted periods. As Secretary of an office whose mission it is to create jobs, laws or policies that summarily freeze individuals out of our workforce need to be held to the utmost level of scrutiny.

We must make meaningful progress on this issue, even if this means substantial reform rather than outright elimination. In addition to the compelling case for entrepreneurship, innovation, and the needs of a twenty-first century economy, basic fairness demands it.

Senator Brownsberger and Representative Ehrlich have proposed thoughtful ways to balance competing interests between individuals and employers seeking to protect legitimate interests, including limitations that would restrict most non-competes to six months in duration.

We must ensure that individuals who are expected to enter into such agreements are able to do so knowingly and under fair circumstances.

Agreements should protect legitimate employer interests, such as bona fide trade secrets, and under terms that are no more restrictive than necessary to protect those interests.

Short-term employees, such as interns, should not be bound by non-compete restrictions.

And workers who are laid off from their jobs through no fault of their own should not be prevented from seeking subsequent employment in the fields in which they are trained and qualified.

Thank you again for the opportunity to appear before you today. We are looking forward to working with you in the coming weeks to implement substantial changes in this regard.